

DEPARTMENT OF STATE REVENUE

Revenue Ruling #99-07 ST

September 2, 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales/Use Tax – Lease of Picture Making Equipment

Authority: IC 6-2.5-2-1, IC 6-2.5-3-4, IC 6-2.5-4-1, IC 6-2.5-4-10, IC 6-2.5-5-3, IC 6-2.5-5-8

The taxpayer requests the Department to rule on whether the lease of picture making equipment that is provided to customers for self-service use constitutes equipment exempt from sales and use taxes.

STATEMENT OF FACTS

The taxpayer entered into a "true lease" agreement to lease picture making equipment (the Unit). The Unit will be installed on site in the taxpayer's retail store locations. The Unit is meant to be customer friendly. A "walk up" customer may require store assistance in the operation of the Unit. After the customer finishes making all their prints, they would take them to the Camera/Photo Department to purchase.

Computer hardware and software drive the Unit. Customers can customize by grouping features together offering what the taxpayer believes to be a value-added change. The Unit produces or makes a digitized image print from the original photo without a negative and transfers images from old, worn photos to an Enhancement Station for photo restoration via write-to-diskette feature. The original print is returned immediately to the customer.

The Unit features reduced "red-eye"; creation of border designs; bigger pictures from wallet size to 8X 12; zoom and crop; and captures digitally on disk all from existing pictures (no negatives needed). Customers make reprint enlargements, photo gifts and

high resolution digital files and images. The Touch Screen Monitor requires minimal intervention at point of sale. The Unit automatically converts odd-sized originals into standard print size in seconds; adds photographic quality creative border designs; incorporates transfer capability (T-shirts, mugs, etc.); displays images in three suggested frame sales screens; networks to a "printerless" Enhancement Station to enhance productivity by sharing a printer; maximizes full job overlap that allows simultaneous image manipulation and printing; and provides option prints of two different 5 X 7 images at one time. Again, the customer can group features together in selectable modes, allowing a choice of the array of services.

The Unit includes Digital Monitor, Digital Processor with built-in CD-ROM and floppy disk drive, Digital Print Scanner and Digital Printer, and the system enhances copyright protection, which detects Special Paper to help copyright infringements.

DISCUSSION

Indiana imposes a state gross retail tax on retail transactions made in Indiana. IC 6-2.5-2-1(a). A person is a retail merchant making a retail transaction when he rents or leases tangible personal property to another. IC 6-2.5-4-10. However, IC 6-2.5-5-3(b) provides that: Transactions involving machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property. IC 6-2.5-5-3(b). Manufacturing machinery, tools, and equipment that are exempt from sales tax are also exempt from use tax. IC 6-2.5-3-4. Thus, the dispositive issue is whether the taxpayer is using the property for the purpose of manufacturing.

In the situation at bar, the taxpayer is not acquiring the Unit for direct use in manufacturing photographic prints. The taxpayer is a business in which customers use the Unit on a self-serve basis; therefore, it is not the taxpayer that is utilizing the Unit to manufacture photographic prints.

However, tangible personal property is exempt from state gross retail tax when the property is acquired for resale, rental, or leasing in the normal course of one's business. IC 6-2.5-5-8. Since the taxpayer purchases supplies, such as paper and toner, to sell to customers for consideration, any copier supplies that are purchased for the copiers are exempt from sales/use tax.

It should also be noted that pursuant to IC 6-2.5-4-1 and IC 6-2.5-2-1, the taxpayer is required to collect sales/use tax from its customers on the sales of photographic prints.

RULING

The Department rules that the taxpayer shall pay applicable sales/use tax on the leased Units. The taxpayer's purchases of copier supplies, such as paper and toner, will be exempt of sales/use tax. Also, the taxpayer must also collect sales/use tax from its customers for all photographic prints sold.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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